

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 NO. C 07-02757

4 DONNA MATHEWS

5 VERSUS

6 PAN AMERICAN LIFE INSURANCE COMPANY;

7 And Doe 1 through Doe 20, Inclusive

8 VOLUME I

9 Videotape deposition of CORY R. SIMON,  
601 Poydras Street, New Orleans, Louisiana  
70130, taken in the offices of Affiliated  
Reporting, 650 Poydras Street, Suite 2610,  
10 New Orleans, Louisiana 70130 on Thursday,  
March 13, 2008.

11 APPEARANCES:

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26

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6 VIDEOGRAPHER: KARL STEGEMAN

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9 REPORTED BY:

10

11 LINDY ROOT

12 Certified Court Reporter

13 Registered Professional Reporter

14

1 DONNA MATHEWS VS.  
2 PAN AMERICAN LIFE INSURANCE COMPANY; and  
3 Doe 1 through Doe 20, Inclusive  
4 Deposition of CORY R. SIMON  
5 Taken on March 13, 2008

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Exhibit #1

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Exhibit #2

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EXAMINATION BY MR. KINNEY

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## 1 S T I P U L A T I O N

2 It is stipulated and agreed by and  
3 between counsel for the parties hereto that  
4 the deposition of the aforementioned  
5 witness is hereby being taken under the  
6 Federal Rules of Civil Procedure, for all  
7 purposes, in accordance with law;

8 That the formalities of reading and  
9 signing are specifically not waived;

10 That the formalities of sealing,  
11 certification and filing are specifically  
12 waived;

13 That all objections, save those as to  
14 the form of the question and the  
15 responsiveness of the answer, are hereby  
16 reserved until such time as this  
17 deposition, or any part thereof, may be  
18 used or sought to be used in evidence.

19 \* \* \* \*

20 LINDY ROOT, Registered Professional  
21 Reporter, and Certified Court Reporter, in  
22 and for the Parish of Orleans, State of  
23 Louisiana, officiated in administering the  
24  
25 oath to the witness.

26

1 (Video introduction.)

2 MR. KINNEY:

3 Michael Kinney for the plaintiff.

4 MR. EVANS:

5 This is Thomas Evans for the  
6 defendant, Pan American Life.

7 CORY R. SIMON,  
8 after having been first duly sworn by the  
9 above-mentioned court reporter, did testify  
10 as follows:

11 EXAMINATION BY MR. KINNEY:

12 Q. State your name for the record.

13 A. Cory Simon.

14 Q. What is your address -- business address?

15 A. 601 Poydras Street, New Orleans, Louisiana  
16 70130.

17 Q. And is that a business address?

18 A. That's correct.

19 Q. And what business is located at that  
20 address?

21 A. Pan American Life Insurance Group.

22 Q. And you're employed by Pan American Life  
23 Insurance Group?

24 A. I am.

25 Q. Okay. What is your job title?

26

1 A. Chief claims officer.

2 Q. I am going to direct a question here to  
3 your attorney.

4 MR. KINNEY:

5 Mr. Evans, I understand that Pan  
6 American has designated Mr. Simon as  
7 the person most knowledgeable on  
8 certain questions that I requested  
9 that they make such a designation.

10 Is that right.

11 THE WITNESS:

12 That's correct.

13 MR. KINNEY:

14 Okay. And can we put it on the  
15 record what subjects he has been  
16 designated on?

17 MR. EVANS:

18 It's subjects 2 through 5 of the  
19 30(b)(6) notice which I assume will  
20 be an exhibit to the deposition.

21 Why don't we go ahead and enter  
22 that?

23 MR. KINNEY:

24 Yeah. Let's go ahead and mark  
25 that.

26

1                   Go off the record a second.

2           THE VIDEOGRAPHER:

3                   Going off the record at 10:05.

4                   This is videotape number one.

5                   (Off the record.)

6           THE VIDEOGRAPHER:

7                   Back on the record at 10:09, but

8                   my camera obviously says 9:09.

9                   Sorry about that.

10          MR. KINNEY:

11                   All right. While we were off the

12                   record, we marked as Exhibit #1 a

13                   copy of the notice of taking

14                   deposition of Pan American Life

15                   Insurance Company, and that will be

16                   part of the deposition.

17                   (Exhibit #1 was marked for

18                   identification.)

19          EXAMINATION BY MR. KINNEY:

20          Q. Mr. Simon, how long have you been employed

21                   by Pan American Life?

22          A. It will be four years in August.

23          Q. And have you had the same job title

24                   throughout those four years?

25          A. I have.

26

1 Q. Could you briefly tell me your educational  
2 background?

3 A. College. College graduate.

4 Q. What college did you graduate from?

5 A. Brooklyn College.

6 Q. I'm sorry?

7 A. Brooklyn College.

8 Q. Can you spell that?

9 A. B-R-O-O-K-L-Y-N.

10 Q. Okay. And what sort of degree did you get  
11 there?

12 A. Business.

13 Q. Do you hold any special licenses of any  
14 sort?

15 A. I hold some insurance industry  
16 designations.

17 Q. Okay. Could you tell me what those are?

18 A. One is through an organization called ICA,  
19 International Claims Association, and that  
20 designation is Associate of Life and Health  
21 Claims or ALHC.

22 The other is through an insurance  
23 industry organization called LOMA, and  
24 through that I have an Associate of  
25 Customer Service, also known as ACS.

26



1 Q. Do you know -- What does one have to do in  
2 order to become an Associate of Life and  
3 Health Claims?

4 A. It is a series of four courses of study  
5 along with testing regarding those  
6 subjects.

7 Q. Okay. And when did you become an Associate  
8 of Life and Health Services?

9 A. 1999.

10 Q. And what does one have to do to become an  
11 Associate of Customer Service?

12 A. I believe it's a series of five insurance  
13 courses with corresponding exams.

14 Q. Who is LOMA?

15 A. LOMA is an insurance organization. It's  
16 Life Organization or Operational Management  
17 Association. It's insurance industry.

18 Q. When did you become an Associate of  
19 Customer Service?

20 A. I believe in 2004.

21 Q. The classes that you take to become an  
22 Associate of Customer Service, could  
23 you -- do you recall the subjects of those  
24 classes?

25 A. There are four I would say general  
26

1 insurance education classes that would  
2 consist of insurance administration, life  
3 and health law, life and health marketing,  
4 and then the customer service oriented  
5 course work.

6 Q. Okay. And going back to the associate  
7 of life and health claims, do you recall  
8 the courses you had to take to become one?

9 A. It is also similar. It is general  
10 insurance course work along with claims  
11 administration, life and -- general life  
12 and health insurance law, and medical and  
13 dental course work.

14 Q. Have you ever had your deposition taken  
15 before?

16 A. I have.

17 Q. How many times?

18 A. Twice.

19 Q. Well, at the risk of repeating some things  
20 that you probably have already heard and  
21 know from the prior depositions, I will go  
22 over very basically the ground rules we are  
23 under here.

24 You have been sworn to tell the truth.  
25 It's the same oath that you would take in a  
26

1 court of law even though we're in the  
2 informal surroundings of the court  
3 reporter's office.

4 You have the same obligation to tell  
5 the truth today as you would if this matter  
6 were to go forward in a court of law.

7 Do you understand that?

8 A. I do.

9 Q. You have to answer out loud, as you're  
10 doing, because the court reporter only  
11 takes down the out loud statements, and  
12 nods of the head and those sorts of  
13 gestures don't really work, although the  
14 videographer will pick those up.

15 Try not to use uh-huh or uh-uh --

16 A. Uh-huh (affirmative response).

17 Q. -- in your answers, because sometimes those  
18 are confused on the record. Better to have  
19 a clear record for everybody.

20 A. Okay.

21 Q. When the deposition is completed, the court  
22 reporter is going to type up a transcript  
23 of the record, and you will have a chance  
24 to read over that transcript and to make  
25 any changes in the transcript that you feel

26

1 appropriate.

2 If you make any changes, I or any other  
3 attorney who is involved in the case can  
4 comment on the fact that you have made  
5 changes, and if they are significant  
6 changes that could change the outcome of  
7 the case. That could be important.

8 So it's important for everyone that you  
9 give each question some thought and try to  
10 give your correct answer today so you don't  
11 have to make any major changes  
12 substantively to the deposition transcript.

13 Do you understand that?

14 A. I do understand.

15 Q. Okay. If I ask you a question and you  
16 don't understand it, tell me, and I will  
17 try to rephrase the question.

18 If I ask a question and you don't  
19 recall the answer, tell me that. You don't  
20 have to guess at something. If you don't  
21 know the answer, say so.

22 If you do understand the question, then  
23 please answer it to the best of your  
24 ability.

25 Is there any reason why we can't

26

1 proceed with your deposition at this time?

2 A. No.

3 Q. You haven't had any medication today that  
4 would affect your ability to testify?

5 A. No.

6 Q. Have you ever given any written or recorded  
7 statement about this case?

8 A. Not to my knowledge.

9 Q. Okay. Did you review any documents before  
10 coming to the deposition?

11 A. No.

12 Q. How old are you?

13 A. 44.

14 Q. Okay. Prior to becoming employed with Pan  
15 Am, where were you employed?

16 A. Swiss Re Life & Health in New York City.

17 Q. How long were you there?

18 A. Seven years.

19 Q. And what jobs did you hold there?

20 A. I was the director of claims.

21 Q. Throughout your entire seven years?

22 A. No. I believe I started out as a senior  
23 claims examiner.

24 Q. Just those two jobs then, senior claims and  
25 director --

26

1 A. Those were the two, you know, titles that I  
2 held there.

3 Q. Okay. And Swiss Re, is that a reinsurance?

4 A. Correct.

5 Q. And what sorts of claims did you handle for  
6 Swiss Re?

7 A. Individual life, group life, individual  
8 disability, and group disability, and their  
9 corresponding components. Waiver of  
10 premium and things of that nature.

11 Q. But it was all in the life and disability  
12 area?

13 A. That's correct.

14 Q. So that takes us back 11 years ago. Is  
15 that right?

16 Approximately?

17 A. 1997, 1998, around there, yeah.

18 Q. Immediately prior to Swiss Re, where were  
19 you employed?

20 A. The company has changed names, but I  
21 believe they are known as ING now.

22 Q. That's an insurance company?

23 A. Yes.

24 Q. And how long were you with ING?

25 A. I believe a year and a half.

26

1 Q. What did you do there?

2 A. I was the claims examiner for life, health,  
3 and disability claims.

4 Q. Prior to ING, had you worked in claims for  
5 an insurance company?

6 A. Yes.

7 Q. Okay. Why don't you just briefly give me  
8 your background in claims for insurance  
9 companies?

10 A. Well, I have been in a claims capacity now  
11 for 25 years since 1984 with increasingly  
12 higher authority and increased title and  
13 responsibilities.

14 Q. And just -- And could you give me the list  
15 of the companies that you have worked for  
16 since '84 up to --

17 A. Amalgamated Life Insurance Company was 1984  
18 through 1988 or '89.

19 National Benefit Life Insurance  
20 Company -- And all of these are located in  
21 New York City. National Benefit Life  
22 Insurance Company from '89 through 1995.

23 ING from 19 --

24 Q. Yeah. Okay.

25 So we are back to ING and --

26

1 A. Correct.

2 Q. -- I have got your history since then?

3 A. That's correct.

4 Q. As chief claims officer at Pan American  
5 Life, what in general are your job duties?

6 A. To ensure day-to-day operations, timeliness  
7 of payment of claims, reviewing and  
8 advising on complex matters.

9 Q. We are here about claims that arise under a  
10 disability income policy and an income  
11 protection policy.

12 Other than the general disability area,  
13 what sorts of claims do you deal with at  
14 Pan American?

15 A. Life. Life insurance claims.

16 Q. So it's all life and disability?

17 A. That's correct.

18 Q. To your knowledge does Pan American offer  
19 insurance outside the life and disability  
20 area?

21 A. They do.

22 Q. What other sorts of insurance do they  
23 offer?

24 A. They offer a work site type product.  
25 Generally a health benefit.

26



1 Q. And do you deal with claims that arise  
2 under the health benefits policies?

3 A. I do not.

4 Q. Okay. Are those claims handled in a  
5 different department than yours?

6 A. They are.

7 Q. Okay. Are you the head of the claims  
8 department?

9 A. For the life and disability operations.

10 Q. Okay. Who do you report to in terms of  
11 structure?

12 A. I report to the vice-president of  
13 administration. I'm not sure -- I think  
14 her exact title is service delivery.

15 Q. And what is her name?

16 A. Judy Norwalt, N-O-R-W-A-L-T.

17 Q. In the department that you manage, how many  
18 employees are there?

19 A. I have -- Give me one moment.

20 I have five employees in the life and  
21 disability. I also manage a separate  
22 department of customer service telephone  
23 representatives, and there are ten  
24 employees in that department.

25 Q. All right. The five employees in life and  
26

1 disability, are they claims personnel?

2 A. They are claims personnel.

3 Q. Okay. And the ten employees in customer  
4 service, are they also claims personnel?

5 A. No. They are general representatives for  
6 all aspects of the company.

7 Q. Okay. One of the names that's come up in  
8 this case is Elaine Bourg.

9 A. Correct.

10 Q. Do you know Elaine Bourg?

11 A. I do.

12 Q. Did she work for you?

13 A. She did.

14 Q. Okay. Was she among the employees in the  
15 life and disability area?

16 A. She was.

17 Q. Okay. And another name that's come up in  
18 this case is Michael Jones.

19 Do you know Mr. Jones?

20 A. I do.

21 Q. Is he currently employed at Pan American?

22 A. He is.

23 Q. Does he work for you?

24 A. He does.

25 Q. Is he also in the life and disability area?

26

1 A. He is.

2 Q. Okay. Have there been -- Over your four  
3 years at Pan American, have there been  
4 consistently around five employees in the  
5 life and disability area?

6 A. Yes.

7 Q. Okay. And so at one time Ms. Bourg and  
8 Mr. Jones were two of the five employees.  
9 Is that right?

10 A. That's correct.

11 Q. Okay. Are you counting yourself as one of  
12 the five employees?

13 A. No.

14 Q. Okay. On a monthly basis, how many claims  
15 are handled by the five employees in the  
16 life and disability area?

17 A. Specifically to life claims or disability  
18 claims or overall?

19 Q. Well, let me ask you -- That's a good  
20 distinction.

21 Of the five employees, are they  
22 specialized between the life claims and the  
23 disability claims?

24 A. Yes.

25 Q. Okay. How many deal with the life claims?

26

1 A. Three of the five.

2 Q. Okay. And then I take it the two deal with  
3 disability claims.

4 A. Correct.

5 Q. Is that right?

6 A. That's correct.

7 Q. Okay. And is there any crossover?

8 I mean do sometimes the life reps deal  
9 with disability claims or not?

10 A. Rarely.

11 Q. Okay. Well, then let's just stick with the  
12 disability claims.

13 A. Okay.

14 Q. On a monthly basis -- if you can give me an  
15 answer to this -- how many disability  
16 claims are processed by the two claims reps  
17 who handle those?

18 A. About 132 to 135.

19 Q. Has that been relatively constant over your  
20 four years?

21 A. Yes.

22 Q. Okay. Was Ms. Bourg working for Pan  
23 American when you first came on board?

24 A. No.

25 Q. And Mr. Jones, was he?

26

1 A. He was working as a temporary when I came  
2 on board.

3 Q. Do you know when Ms. Bourg was hired by Pan  
4 American?

5 A. I believe either October or November of  
6 2004.

7 Q. Okay. Did she receive any training at Pan  
8 American after she came on board?

9 A. She did.

10 Q. Do you know what training she received?

11 A. She received general training in the area  
12 of a support staff. Which forms to mail  
13 out, how to order medical records, how to  
14 follow up on certain items, and how to cut  
15 our disbursement checks.

16 Q. Okay. Did she receive any training as to  
17 determining whether somebody was disabled  
18 or not?

19 A. No.

20 Q. Since you have been employed by Pan  
21 American, to your knowledge has Mr. Jones  
22 received any training from Pan American?

23 A. In the formal sense, no.

24 Q. Okay. By the formal sense, I take it you  
25 mean he hasn't attended any specific  
26

1 classes?

2 A. Correct.

3 Q. Okay. Do you know if he has attended any  
4 specific classes in the subject of  
5 insurance outside of classes offered by Pan  
6 American since you have been employed by  
7 Pan American?

8 A. He has not.

9 Q. Okay. Have you personally advised  
10 Mr. Jones on aspects of handling disability  
11 claims?

12 A. Yes.

13 Q. Okay. Other than what you have personally  
14 told him, to your knowledge has he had any  
15 training in handling disability claims?

16 A. He came with experience in handling  
17 disability claims.

18 Q. Okay. Could you briefly tell me what you  
19 understand his experience to be?

20 A. Michael has worked in multiple companies as  
21 a temporary consultant handling different  
22 aspects of claims, including disability  
23 claims.

24 Q. Okay. Now, earlier in the deposition you  
25 gave me some subjects that you had -- I

26

1 don't know -- What do you call the  
2 associated -- association of life and  
3 disability claims?

4 A. That's called ICA, International Claims  
5 Association.

6 Q. All right. The ICA or LOMA designations  
7 that you received, does Mr. Jones have such  
8 similar designations?

9 A. He does not.

10 Q. Have you personally received any training  
11 from Pan American regarding Pan American's  
12 disability policies?

13 A. No.

14 Q. Okay. Prior to coming to Pan American, in  
15 your experience handling disability  
16 policies, had you ever been required to  
17 address the issue of rehabilitation  
18 benefits?

19 A. No.

20 Q. Okay. Have you received any special  
21 training from any source on rehabilitation  
22 benefits?

23 A. No.

24 Q. Okay. The 132 to 135 claims a month in the  
25 disability area that are processed by Pan

26

1 American, what proportion of those do you  
2 personally look at?

3 A. The 132 to 135 are a combination of new,  
4 pending, and ongoing claims. I look at  
5 a -- I would say I look at about 50 percent  
6 of the new claims that come into Pan  
7 American.

8 Q. Okay. And do you regularly review the  
9 ongoing claims as well?

10 A. Some of them.

11 Q. Okay. Is there some criteria that you use  
12 to decide whether to look at a new claim?

13 A. No.

14 Q. Okay. So they are just random choices?

15 A. Well, they are random choices through an  
16 audit process.

17 Q. Well, could you explain what an audit  
18 process is?

19 A. I generally look at -- you know, in all  
20 aspects of the department, I generally take  
21 a sampling of all claims that come into the  
22 company that are processed for payment.

23 Q. Okay. So is there anything about the  
24 claims, the new claims that makes you  
25 decide to look at them in particular?

26



1 A. No.

2 Q. Okay. And the ongoing claims --

3 A. Uh-huh (affirmative response).

4 Q. Is it the same thing, a sort of generalized  
5 selection, or are there criteria that you  
6 use to --

7 A. No. The ongoing claims are those that we  
8 deem with some disability are reviewed once  
9 a year. So I will generally look at a few  
10 of those each year.

11 Q. Okay. But there are no specific things  
12 that automatically require that you review  
13 a claim. Is that right?

14 A. No.

15 Q. Okay. Sometimes do the claims  
16 representatives bring you problem claims?

17 A. Yes.

18 Q. Okay. So when those problems are brought  
19 to you, of course, you review those.

20 Is that right?

21 A. That's correct.

22 Q. Okay. Of the 132 to 135 claims that are  
23 processed a month in the disability area of  
24 Pan Am, how many of those on average  
25 contain a claim for rehabilitation

26

1 benefits?

2 A. To my knowledge, there have been two or  
3 three prior claims.

4 Q. Total?

5 A. Total.

6 Q. Okay. As you sit here today, do you have a  
7 recollection of reviewing two or three  
8 claims other than the Mathews claim for  
9 rehab benefits?

10 A. I have a recollection -- a very good  
11 recollection of one. A slight recollection  
12 of another.

13 Q. Okay. So that would be two?

14 A. Correct.

15 Q. Okay. Did Pan Am provide rehabilitation  
16 benefits to either of those claimants?

17 A. No.

18 Q. So to your knowledge, since you have been  
19 at Pan American, no claimant has received  
20 rehabilitation benefits.

21 Is that correct?

22 A. That is correct.

23 Q. Have you made any investigation to see  
24 whether Pan American provided any  
25 rehabilitation benefits to any claimant

26

1 prior to your tenure at Pan Am?

2 A. No.

3 Q. No, you have never?

4 A. No, I have not done that.

5 Q. Okay. Have you asked anyone whether Pan Am  
6 has ever provided any rehabilitation  
7 benefits?

8 A. No.

9 Q. Okay. If you were to ask that question,  
10 who would you ask?

11 A. Most likely somebody from our controller's  
12 department.

13 Q. During your tenure at Pan Am, has Pan Am to  
14 your knowledge ever suggested to a claimant  
15 that the claimant seek rehabilitation?

16 A. Not to my knowledge.

17 Q. And we are talking about occupational --

18 A. I understand.

19 Q. Let me just -- It's important that the  
20 court reporter get both of us, and if we  
21 both talk at the same time the record comes  
22 out all garbled.

23 Well, when I say rehabilitation  
24 benefits, I'm talking about occupational  
25 rehabilitation benefits.

26

1 Is that how you understood it?

2 A. Yes.

3 Q. Okay.

4 MR. EVANS:

5 You know, just to interpose an  
6 objection to that as vague.

7 MR. KINNEY:

8 Vague?

9 MR. EVANS:

10 Whatever you mean by occupational  
11 rehab.

12 EXAMINATION BY MR. KINNEY:

13 Q. Okay. Vocational rehabilitation, do you  
14 understand what I mean by that?

15 A. Yes.

16 MR. EVANS:

17 Same objection.

18 EXAMINATION BY MR. KINNEY:

19 Q. When a claimant requests rehabilitation  
20 benefits, what is Pan Am's process for  
21 reviewing and deciding on that claim?

22 A. Generally we would find out what type of  
23 occupational vocational rehabilitation and  
24 into what field for future employment the  
25 insured would want to take on.

26

1 Q. Anything else?

2 A. We generally ask them for some type of  
3 action plan that would describe what the  
4 course of study would be, how long it would  
5 take, how they expect this to accomplish  
6 their goal of returning to work.

7 Q. Okay. Anything else in terms of  
8 information you would request?

9 A. No.

10 Q. Okay. And what criteria would you use to  
11 decide whether or not to provide the  
12 rehabilitation benefits?

13 A. If it was -- If it would result in an  
14 occupation whereas the insured or claimant  
15 would be able to return to normal full-time  
16 work.

17 Q. That's the only criteria?

18 A. We would also -- Once they returned to such  
19 normal full-time work, we would expect the  
20 claim to end at that point.

21 Q. Anything else that would be a criterion in  
22 determining whether or not to grant the  
23 rehabilitation benefits?

24 A. Not to my knowledge.

25 Q. Okay. The two other rehabilitation claims  
26

1           that you recall as you sit here today, do  
2           you recall what criteria they failed to  
3           meet?

4       A. They failed to meet -- to provide us with  
5       a -- you know, an action plan or even an  
6       occupation in which they wished to  
7       endeavor.

8       Q. One of these claims you recall fairly  
9       clearly. Is that right?

10      A. Correct.

11      Q. Let's talk about that one just for a  
12      minute.

13           In that claim, the claimant -- Well,  
14      what did the claimant ask for?

15      A. The claimant asked for some type of voice  
16      to speech software and, you know, training  
17      on that software. You know, on that  
18      software or those types of systems.

19      Q. Do you recall what his disability was?

20      A. Quadriplegic.

21      Q. Okay. And do you know what occupation he  
22      hoped to pursue with that?

23      A. There was no occupation.

24      Q. Okay. Did Pan Am do any study to determine  
25      whether he could perform an occupation if  
26

1           he had the voice to speech software?

2           A. No.

3           Q. Okay. So you relied entirely upon him to

4           tell you what occupation?

5           A. The person didn't provide an occupation.

6                   They wanted this rehabilitation really

7           to enhance their day-to-day -- or it was

8           actually a her. Her day-to-day living.

9           Q. The other claim that you recall, but not as

10          clearly --

11          A. Uh-huh (affirmative response).

12          Q. -- do you recall why -- Strike that.

13                   Do you recall what criteria that

14          claimant failed to meet for rehabilitation

15          benefits?

16          A. I think -- No. I don't recall what

17          criteria they failed to meet on that one.

18          Q. Okay. Do you recall what rehabilitation

19          they requested?

20          A. They requested I believe some training,

21          education, or schooling to become a real

22          estate agent.

23          Q. Do you recall what the disability was?

24          A. I don't.

25          Q. Do you recall why Pan Am declined to

26

1 provide that rehabilitation?

2 A. I don't.

3 Q. Do you recall what the claimant had done

4 prior to that?

5 A. No.

6 Q. Does Pan American Life Insurance Company

7 utilize a claims manual in connection with

8 disability claims?

9 A. We do not.

10 Q. Okay. Well, I requested and counsel

11 provided me with a document which I would

12 like to talk to you about.

13 A. Uh-huh (affirmative response).

14 Q. Here's one for you.

15 We will mark that as the next exhibit,

16 which would be Exhibit #2, for the purposes

17 of this deposition.

18 And I show you this document,

19 Mr. Simon, and ask you if you can identify

20 it?

21 (Exhibit #2 was marked for

22 identification.)

23 A. I can.

24 Q. What is it?

25 A. This is a reference guide that we utilize

26



1 from one of our reinsurers.

2 Q. What do you utilize it for?

3 A. General reference.

4 Q. Other than this document, Exhibit #2, is  
5 there any other written material that  
6 claims personnel use in deciding whether to  
7 provide disability benefits?

8 A. Only the policy.

9 Q. Only the policy?

10 A. Correct.

11 Q. How long has Pan American Life Insurance  
12 Company been using Exhibit #2 as a  
13 reference guide?

14 A. I would say within the last two or three  
15 years.

16 Q. Okay. Was it using this reference guide as  
17 of December of 2005?

18 A. I can't be sure.

19 Q. Okay. Since you have been at Pan American  
20 Life Insurance Company, other than  
21 Exhibit #2, has Pan American Life Insurance  
22 Company used any written documents as a  
23 reference guide for disability claims other  
24 than Exhibit #2?

25 A. We have some documents of general  
26

1 knowledge.

2 Q. Could you describe those documents?

3 A. Generally they are documents which I  
4 acquire from industry conferences,  
5 specifically to trends within the industry.

6 Q. Do any of those documents provide guidance  
7 for claims personnel in determining whether  
8 to grant benefits under a disability  
9 policy?

10 A. No.

11 Q. So then since you have been at Pan Am, the  
12 only document in writing that provides  
13 guidance for claims decisions on disability  
14 policies is Exhibit #2.

15 Is that right?

16 MR. EVANS:

17 Objection. Misstates his  
18 testimony.

19 EXAMINATION BY MR. KINNEY:

20 Q. You can answer.

21 A. It's okay to answer?

22 MR. EVANS:

23 Yeah.

24 I'm just objecting for the record.

25 Unless I instruct you not to answer,  
26

1                   you should go ahead and answer.

2                   THE WITNESS:

3                   Okay. I'm sorry. I just wanted  
4                   to make sure.

5                   Would you repeat the question?

6                   EXAMINATION BY MR. KINNEY:

7                   Q. Could you read the question back, please?

8                   (The requested testimony was read back  
9                   as follows:

10                  Q. So then since you have been  
11                  at Pan Am, the only document in  
12                  writing that provides guidance for  
13                  claims decisions on disability  
14                  policies is Exhibit #2.

15                  Is that right?)

16                  THE WITNESS:

17                  That's correct.

18                  EXAMINATION BY MR. KINNEY:

19                  Q. Do the claims personnel who work in your  
20                  department in the disability area have  
21                  access to Exhibit #2?

22                  A. Yes.

23                  Q. Okay. Do they each have a copy of  
24                  Exhibit #2?

25                  A. They do.

26

1 Q. Okay. Have you personally read Exhibit #2?

2 A. Not from cover to cover.

3 Q. You have read parts of it?

4 A. I have read -- I have read the sections in  
5 which I needed to seek reference.

6 Q. Do you keep a copy of this Exhibit #2 at  
7 your desk?

8 A. I keep an electronic copy of it on my  
9 desktop. Right.

10 Q. Okay. The other claims reps -- Strike  
11 that.

12 The claims representatives who work for  
13 you in disability, is their copy also  
14 electronic?

15 A. They have a -- We all have a hard copy or  
16 an electronic copy. It's a matter of  
17 preference.

18 Q. Okay. I see that this document was  
19 prepared by somebody called Munich Re  
20 Group.

21 A. Correct.

22 Q. Do you know who that is?

23 A. Yes.

24 Q. Who?

25 A. They are -- They are a reinsurance company.

26

1           They are also one of our reinsurers.

2           Q. Do you know what markets Munich Re  
3           occupies?

4           A. Life and health and property and casualty.

5           Q. Okay. And how about geographically where  
6           do they reinsure?

7           Do you know?

8           A. Worldwide.

9           Q. Okay. And does Munich Re reinsure some Pan  
10          American policies?

11          A. They do.

12          Q. Do they reinsure Pan American disability  
13          policies?

14          A. They do.

15          Q. The policies that we are going to talk  
16          about in a little bit, the Mathews  
17          policies, do they reinsure those policies?

18          A. They do not.

19          Q. Okay. Do you know if anyone reinsures  
20          those policies?

21          A. They are not reinsured.

22          Q. Does Munich Re perform any services for Pan  
23          American Life Insurance Company?

24          A. Can you expand on that?

25          Q. Well, I will tell you why I asked that. It

26

1 is because somewhere in this Exhibit #2,  
2 Munich Re says we will be happy to help you  
3 out with any of your claims or anything  
4 like that if we can help you.

5 So I'm just curious as to whether or  
6 not Munich Re does something for Pan  
7 American Life Insurance Company other than  
8 just be a traditional reinsurer?

9 A. They will provide advisement services if  
10 requested.

11 Q. Okay. Since you have been at Pan American  
12 Life Insurance Company, has Pan American  
13 requested any advisement services from  
14 Munich Re regarding disability claims?

15 A. I couldn't say specifically from Munich.

16 Q. Okay. Has it requested services as to  
17 disability policies from any reinsurer?

18 A. We have.

19 Q. Okay. What sorts of services?

20 A. Generally services or recommendations for  
21 further outside either investigations or  
22 vendors or things of that nature.

23 Q. Okay. Do you know whether any such  
24 services were requested from any reinsurer  
25 as to the Mathews claims?

26

1 A. No.

2 Q. No, you don't?

3 A. I don't know.

4 Q. Okay.

5 A. I'm sorry.

6 From the reinsurer?

7 Q. Yes.

8 A. No, not from the reinsurer.

9 Q. From any reinsurer?

10 A. No.

11 Q. Okay.

12 A. I don't know. My answer is I don't know if  
13 we requested.

14 I'm sorry.

15 Q. That's fine.

16 You know, you're right. We need to get  
17 the testimony clear. So thank you for  
18 cleaning that up.

19 Who at Pan American decided to use  
20 Exhibit #2 as a reference guide?

21 A. This was given to us by the reinsurer as a  
22 reference guide. So ultimately it was my  
23 decision that this could be helpful.

24 Q. Okay. And before making that decision,  
25 you, I take it, read over --

26

1 A. I did.

2 Q. -- the pertinent portions of this?

3 A. I did. I did.

4 Q. Okay. And you agreed with the statements  
5 that were made in here. Is that right?

6 A. I agreed that --

7 MR. EVANS:

8 Objection. Calls for speculation.

9 He testified he hasn't read the whole  
10 thing.

11 EXAMINATION BY MR. KINNEY:

12 Q. You may answer.

13 A. I agree that there were portions within  
14 this document that were relatable to our  
15 policy.

16 Q. Okay. Did you -- Strike that.

17 At any time since you first saw  
18 Exhibit #2, have you seen anything in  
19 Exhibit #2 that you thought was wrong?

20 A. Not as it relates to our policy.

21 Q. You thought that it was wrong about  
22 something else?

23 A. I couldn't say if it was wrong about  
24 something else. I can only speak to our  
25 policy.

26



1 Q. Okay. When you -- Strike that.

2 You personally distributed this to the  
3 disability claims personnel.

4 Is that right?

5 A. That's correct.

6 Q. And when you did, did you tell them why you  
7 were giving it to them?

8 A. I did.

9 Q. What did you tell them?

10 A. I told them to use this as general  
11 reference.

12 Q. Okay. Did you tell them it was good?

13 A. I told them that I thought it had parts  
14 that were relevant to our lines of  
15 business.

16 Q. Okay. Did you specifically direct them to  
17 specific parts of Exhibit #2 that you  
18 thought were relevant?

19 A. No.

20 Q. Since you first distributed Exhibit #2 to  
21 the claims representatives, have any of the  
22 disability claims representatives who work  
23 for you asked you any questions about  
24 Exhibit #2?

25 A. Not to my knowledge.

26

1 Q. Have any of the disability claims  
2 representatives said anything to you at all  
3 about Exhibit #2?

4 A. Nothing other than when I initially  
5 distributed it.

6 Q. Do you know whether Mr. Jones has read  
7 Exhibit #2?

8 A. I couldn't answer for Mr. Jones.

9 Q. Okay. Did you instruct him to read it when  
10 you gave it to him?

11 A. No.

12 Q. Okay. And for Ms. Bourg, do you know  
13 whether Ms. Bourg has read Exhibit #2?

14 A. I don't believe Ms. Bourg received a copy  
15 of this.

16 And if I said that the claims  
17 personnel -- We have a distinction between  
18 claims personnel, the people who actually  
19 adjudicate claims, and support staff.

20 So support staff would not have  
21 received this.

22 Q. Okay. Well, I probably should go back and  
23 clean up that whole area.

24 A. Okay.

25 Q. Ms. Bourg, do you classify her as claims  
26

1 personnel or support staff?

2 A. Support staff.

3 Q. Okay. And Mr. Jones?

4 A. He is claims personnel.

5 Q. Okay. So of the 132 to 135 disability  
6 claims per month that are processed at Pan  
7 American, all of those are processed by  
8 Mr. Jones.

9 Is that right?

10 A. They are all evaluated by Mr. Jones.

11 Q. With the assistance of support staff. Is  
12 that right?

13 A. Through the paperwork aspect, as I  
14 indicated sending forms, receiving forms,  
15 tracking medical records, processing  
16 payments.

17 Q. Okay. Well, I am just trying to get a  
18 clear picture.

19 I understood from your earlier  
20 testimony there were two people in the  
21 disability claims area.

22 A. That's correct.

23 Q. And at one time those two people were  
24 Mr. Jones and Ms. Bourg?

25 A. That's correct.

26

1 Q. Okay. Now I understand Ms. Bourg is all  
2 support.

3 Is that right?

4 A. Ms. Bourg is all support, that's correct.

5 Q. And Mr. Jones is everything else.

6 Is that right?

7 A. That's correct.

8 Q. Okay. So all of the 132 to 135 claims are  
9 decided upon by Mr. Jones.

10 Is that right?

11 A. That's correct.

12 THE VIDEOGRAPHER:

13 Excuse me, Counsel. I need to  
14 change tapes.

15 MR. KINNEY:

16 Certainly.

17 THE VIDEOGRAPHER:

18 Okay. We are going off the  
19 record. It's 11:05. This is the end  
20 of videotape number one.

21 (Off the record.)

22 THE VIDEOGRAPHER:

23 We're back on the record. This is  
24 the beginning of videotape number  
25 two. It's 11:07.

26

1 EXAMINATION BY MR. KINNEY:

2 Q. Back on the record, Mr. Simon.

3 I would like for you to turn to the  
4 page that's Bates stamp PAL 1049 of the  
5 Exhibit #2.

6 A. Okay.

7 Q. Okay. And the second paragraph from the  
8 bottom.

9 A. Okay.

10 Q. Do you see that?

11 A. Uh-huh (affirmative response).

12 Q. The last sentence says in extreme  
13 situations they may want to investigate the  
14 veracity of the claimant's statements or  
15 subject of the claimant --

16 A. I don't have -- I'm sorry. I don't have  
17 that on my page.

18 Q. Yes, you do. The second-to-last paragraph,  
19 the last sentence.

20 A. Oh, the last sentence. Okay.

21 I'm sorry. Go ahead.

22 Q. In extreme situations they may want to  
23 investigate the veracity of the claimant's  
24 statements or subject the claimant to an  
25 independent medical examination.

26

1 Do you see that?

2 A. I do.

3 Q. Okay. Is that Pan American's policy?

4 A. Yes.

5 Q. That you only require independent medical  
6 examinations in extreme situations?

7 MR. EVANS:

8 Objection. Misstates the  
9 testimony and the document.

10 EXAMINATION BY MR. KINNEY:

11 Q. You can answer.

12 A. Not only in extreme situations.

13 Q. Okay. It's more common?

14 A. It's more often than not.

15 Q. Okay. So you have -- So Pan American  
16 doesn't follow this particular guideline  
17 from the Munich Re manual.

18 Is that right?

19 MR. EVANS:

20 Objection. This is one sentence  
21 out of a three-page section. I can't  
22 say that that's an accurate -- I  
23 believe it misstates the document.

24 EXAMINATION BY MR. KINNEY:

25 Q. You can answer.

26

1 A. We do not follow the verbiage extreme.

2 Q. Why not?

3 A. We do it for a good majority of our  
4 claimants to get a full objective  
5 evaluation of their disability.

6 Q. So more than half of the claimants you send  
7 to an independent medical examiner?

8 A. I would say --

9 MR. EVANS:

10 Can I object?

11 I didn't hear the end of your  
12 question.

13 MR. KINNEY:

14 Let me just say it again.

15 EXAMINATION BY MR. KINNEY:

16 Q. I thought I just heard you say a full  
17 majority, and so I --

18 A. A good majority, correct.

19 MR. EVANS:

20 Well, can we back up?

21 I want to hear the end of your  
22 question, because I didn't hear what  
23 you are asking.

24 EXAMINATION BY MR. KINNEY:

25 Q. Okay. So my question is do more -- Does  
26

1 Pan American require more than 50 percent  
2 of disability claimants to go to an  
3 independent medical examination?

4 A. We require I would say either an  
5 independent medical examination or some  
6 type of functional capacity testing, you  
7 know, synonymous outside testing or  
8 evaluation.

9 Q. For more than half of the claimants?

10 A. I would say yes, that's accurate.

11 Q. Okay. Do you know whether Ms. Mathews was  
12 sent to an independent medical examination?

13 A. She was.

14 Q. Okay. Do you know who decided to send her  
15 to an independent medical examination?

16 A. It was through advisement. So I would say  
17 I made the ultimate decision.

18 Q. So did Mr. Jones come to you with a  
19 question about that?

20 A. Any use of outside vendors other than our  
21 medical director needs to be approved by  
22 me.

23 Q. So the answer to my question was no, he did  
24 not come to you?

25 A. He did come to me.

26



1 Q. Did he have a special question about using  
2 an independent medical examination in this  
3 case?

4 A. He had some information -- He expressed  
5 some information to me that he thought it  
6 would be helpful in evaluating this case.

7 Q. Okay. Now, do you recall what he told you  
8 about that?

9 A. I don't recall exactly what he told me  
10 about that.

11 Q. In general?

12 A. Generally that we could not objectively  
13 confirm or deny the existence of disability  
14 in this person.

15 Q. Did you review any documents to determine  
16 whether Mr. Jones was right on that  
17 subject?

18 A. I did.

19 Q. Do you recall what you reviewed?

20 A. I do not.

21 Q. Did you form an opinion as to whether or  
22 not an independent medical examination was  
23 appropriate in this case?

24 A. I did.

25 Q. And what opinion was that?

26

1 A. That it was appropriate.

2 Q. Okay. Do you recall why you formed that  
3 opinion?

4 A. Because we could not confirm or deny  
5 whether she was disabled.

6 Q. Okay. Once Pan American decides to send a  
7 disability claimant to an independent  
8 medical examination, how does it decide  
9 what doctor to use?

10 A. We will generally get a reference from our  
11 medical director. That is the most likely  
12 scenario.

13 Q. Do you know if that was done in the Mathews  
14 case?

15 A. I can't confirm or deny. I can't.

16 Q. Okay.

17 A. That's the most likely outcome.

18 Q. Are there any criteria that you use for  
19 where an independent medical examination  
20 will take place?

21 A. Well, we try to make it within, you know, a  
22 geographic area.

23 Q. Okay.

24 A. Within the same state.

25 Q. All right. Well, of course, we are out in  
26

1 California.

2 A. Right.

3 Q. Pretty big state.

4 So I just wonder is there a mileage  
5 distance that you try to keep within?

6 A. You know, I -- You know, we don't know the  
7 geographics of some of the areas. We  
8 believe we take the closest person that we  
9 think will, you know, perform the  
10 services -- the best services, you know,  
11 that they can provide.

12 Q. Okay. I would like you to turn to the next  
13 page of this Munich Re document,  
14 Exhibit #2, 1050.

15 A. Okay.

16 Q. The very first complete sentence on the top  
17 of the page.

18 A. Okay.

19 Q. Usually claims professionals will be  
20 satisfied that the claimant is disabled  
21 within the meaning of the policy wording  
22 and will approve benefits. On rare  
23 occasions they will believe that reasonable  
24 grounds exist to resist the claim.

25 Do you see that?

26

1 A. I do.

2 Q. Okay. Does that reflect your experience at  
3 Pan American?

4 A. It does.

5 Q. That only rarely do you resist the claim.  
6 Is that right?

7 A. We pay substantially more claims than we  
8 resist.

9 Q. Okay. Approximately what percentage of  
10 claims do you resist in disability?

11 A. One to two percent.

12 Q. I would like for you to turn to the  
13 section at Bates stamp PAL 1056.

14 A. Okay. I am there.

15 Q. There's a section at the bottom half of the  
16 page called Investigations and  
17 Surveillance.

18 Do you see that?

19 A. Correct. I do see that.

20 Q. Okay. Before I go through that, let me  
21 just ask you.

22 Under what circumstances does Pan  
23 American place a disability claimant under  
24 surveillance?

25 A. When we cannot confirm or deny disability.

26

1 Q. Okay. So every time that you can't confirm  
2 or deny disability?

3 A. We use it as one of our investigative  
4 tools.

5 Q. In what percentage of cases do you utilize  
6 surveillance?

7 A. About ten percent.

8 Q. Okay. And is it correct to say that in  
9 those ten percent of cases, all of those  
10 ten percent also have an independent  
11 medical examination?

12 A. I cannot -- I can't confirm that.

13 Q. Okay. Well, I would like for you to go to  
14 the very last full sentence on the page  
15 that you're looking at, PAL 1056.

16 A. Okay.

17 Q. In extreme cases claimants may be placed  
18 under surveillance for several days and  
19 their movements recorded.

20 Do you see that?

21 A. I do.

22 Q. Okay. Is that Pan American's policy, that  
23 surveillance of that sort is only used in  
24 extreme cases?

25 A. It's not.

26

1 Q. Do you know whether Ms. Mathews was placed  
2 under surveillance?

3 A. She was.

4 Q. Who decided to do that?

5 A. Again, any use of outside vendors, the  
6 decision is ultimately mine.

7 Q. Okay. So how did it come to your attention  
8 that you might use outside surveillance in  
9 this case?

10 Did Mr. Jones bring that up?

11 A. It was through Mr. Jones' recommendation.

12 Q. Okay. What did he say when he recommended  
13 surveillance?

14 A. He thought it would be helpful in  
15 determining whether the disability exists  
16 or not.

17 Q. Okay. Do you know what Ms. Mathews'  
18 disability is?

19 A. Some type of back and neck pain.

20 Q. Okay. What -- Well, Strike that.

21 Did you actually have anything to do  
22 with hiring a private investigator to put  
23 her under surveillance?

24 A. No.

25 Q. Who did that?

26

1 A. Mr. Jones.

2 Q. When you approved the surveillance request,  
3 how long did you approve the surveillance  
4 for?

5 A. I don't recall if it was for a specific  
6 length of time.

7 Q. And it was your understanding that the  
8 surveillance might show that Ms. Mathews  
9 was not disabled.

10 Is that right?

11 A. That's correct.

12 Q. Okay. And what would you anticipate a  
13 private investigator might find that would  
14 show a claimant with Ms. Mathews'  
15 disabilities was not disabled?

16 MR. EVANS:

17 Objection. Calls for speculation,  
18 and assumes facts not in evidence.

19 EXAMINATION BY MR. KINNEY:

20 Q. You can answer.

21 A. I would expect that they would find -- I'm  
22 sorry.

23 Repeat the question.

24 Q. Well, my question is this.

25 You authorized a private investigator  
26

1 to put Ms. Mathews under surveillance --

2 A. Right.

3 Q. -- because you thought he might find that

4 she was not disabled.

5 Correct?

6 A. Right.

7 Q. Okay. What would you expect -- What thing

8 might he come back with which would show

9 she wasn't disabled?

10 A. Normal day-to-day activities.

11 Q. Like what?

12 A. Driving, walking, carrying objects, lifting

13 objects, bending, turning. Just general

14 day-to-day functions.

15 Q. Okay. Did you understand that Ms. Mathews

16 was disabled from driving?

17 A. I did not. I don't know if she was

18 disabled from driving.

19 From the video?

20 Q. No.

21 From when you authorized the video.

22 A. No.

23 Q. You didn't know, or you thought she was not

24 disabled from driving?

25 A. I did not know if she was disabled or not

26



1 from driving.

2 Q. Well, did you make an analysis of that in

3 determining whether or not to send out a

4 private investigator?

5 A. That was determined on Mr. Jones'

6 recommendation so --

7 Q. Okay.

8 A. We did not believe that she would have been

9 disabled from driving.

10 Q. Okay. Well, I guess my question is in Ms.

11 Mathews' case --

12 A. Uh-huh (affirmative response).

13 Q. -- what activity that could be seen by a

14 private investigator would demonstrate that

15 she was not disabled?

16 A. Those that would be involved in bending,

17 twisting, lifting. Those types of

18 activities.

19 Q. Okay. Is there a particular point in the

20 disability claim process where Pan American

21 typically sends out a private investigator

22 for surveillance?

23 A. Generally if we cannot confirm or deny

24 disability. So --

25 Q. So what -- Let me ask you this.

26

1           Would you typically send a claimant to  
2           an independent medical examination first  
3           before sending out a private investigator?

4       A. Generally.

5       Q. Have you ever sent a private investigator  
6           out for surveillance of a claimant before  
7           you sent the claimant to an independent  
8           medical examination?

9       A. I couldn't confirm that.

10      Q. Have you ever sent a claimant to an  
11         independent medical examination and sent  
12         out a private investigator at the same  
13         time?

14      A. We have.

15      Q. Why would you do that?

16      A. We would observe the actions to and from  
17         the doctor's office.

18      Q. Have you done that in cases other than Ms.  
19         Mathews?

20      A. We have.

21      Q. Have you ever seen a case of that sort  
22         where the private investigator has provided  
23         information that showed that the claimant  
24         was not disabled?

25      A. Well, the private investigator --

26

1 MR. EVANS:

2 Objection.

3 Just to clarify, this is strictly  
4 as to Pan American claims?

5 EXAMINATION BY MR. KINNEY:

6 Q. Yeah, I'm asking about as to Pan American.

7 You testified that there are occasions  
8 where you send a private investigator out  
9 to watch the claimant go to the doctor.

10 Is that right?

11 A. We send an investigator out to monitor  
12 their -- them just prior to going to the  
13 doctor, yes.

14 Q. Okay. Do you actually have the private  
15 investigator watch the claimant drive to  
16 the doctor's office?

17 A. That I can't confirm or deny.

18 Q. Okay. Can you think of -- I mean is there  
19 a reason why Pan American would send a  
20 private investigator to watch a claimant  
21 drive to the doctor's office?

22 A. Well, generally to confirm -- to confirm  
23 surveillance findings with what the doctor  
24 may find strictly as a, you know, strictly  
25 as an objective comparison.

26

1 Q. I see.

2 All right. I would like for you to go  
3 back in Exhibit #2 to page PAL 1052.

4 A. All right.

5 Q. Are you there?

6 A. Uh-huh (affirmative response).

7 Q. And there's a section about -- it's about  
8 halfway down called Independent Medical  
9 Examinations.

10 A. I'm there.

11 Q. Okay. The second paragraph --

12 A. Okay.

13 Q. -- if you go to the second sentence, which  
14 is referring to independent medical  
15 examinations, it says, this tool is  
16 normally used when some doubt exists about  
17 the severity of the restrictions and  
18 limitations being reported.

19 Do you see that?

20 A. I do.

21 Q. Okay. Is that when Pan American uses an  
22 independent medical examination?

23 A. Yes, that's a correct statement.

24 Q. Okay. And in the Mathews case, was there  
25 some doubt about the severity of the  
26

1           restrictions and limitations being  
2           reported?

3       A. There was not sufficient evidence to  
4       confirm that she was disabled.

5       Q. How do you know that?

6       A. I have read through some of the file. I'm  
7       familiar with certain aspects of the file.

8       Q. Okay. Prior to the independent medical  
9       examination, had Pan American obtained  
10      documents from Ms. Mathews' treating  
11      physicians?

12     A. We did.

13     Q. Okay. And was there something in those  
14     documents that led Pan American to believe  
15     that there was doubt about the severity of  
16     restrictions and limitations being  
17     reported?

18     A. Those documents, along with other medical  
19     records, were sent to our medical director  
20     for review.

21     Q. Okay. And did you receive a review from  
22     your medical director?

23     A. We did.

24     Q. Was it in writing?

25     A. It was.

26

1 Q. And what did it conclude?

2 A. It concluded that there was no objective  
3 findings that her state of disability could  
4 preclude her from performing her normal  
5 work -- work duties.

6 Q. Okay. Is that writing in the claim file?

7 A. It is.

8 Q. Who's the doctor, the medical director?

9 A. Dr. Nudelman.

10 Q. Oh.

11 How long was it from the time you  
12 received Dr. Nudelman's report until the  
13 time that Pan American decided to send the  
14 claimant to an independent medical  
15 examination?

16 A. I don't know the time frame.

17 Q. Okay. How long would it typically be in a  
18 situation where Dr. Nudelman says there's  
19 no objective evidence?

20 A. I would say possibly 30 to 90 days.

21 Q. Okay. And during that 30 to 90-day period,  
22 does Pan Am pay benefits typically to the  
23 claimant?

24 A. In some cases.

25 Q. Okay. Let's go to page 1053.

26

1 A. Okay.

2 Q. At the bottom of the page there's a section  
3 on rehabilitation.

4 Do you see that?

5 A. Yes.

6 Q. Have you read that section on  
7 rehabilitation?

8 A. I have.

9 Q. Okay. Does the section on rehabilitation  
10 in general reflect Pan American's practices  
11 as to rehabilitation benefits under the  
12 disability policies involved in the Mathews  
13 case?

14 A. Some portions.

15 Q. What portions reflect Pan American's  
16 policies?

17 A. That the idea is to return the claimant to  
18 a place of normal employment and  
19 effectively be able to end our claim.

20 Q. Okay. Go to the last sentence on page  
21 1053.

22 A. Okay.

23 Q. Since the claimant is not normally  
24 obligated to participate in rehabilitation  
25 programs, most insurers consider motivation  
26

1 as a prime factor in selecting candidates.

2 Do you see that?

3 A. Yes.

4 Q. Does that reflect Pan American's practices?

5 A. It does not.

6 Q. It does not?

7 A. No.

8 Q. Motivation is not a prime factor then in

9 Pan American's view.

10 Is that right?

11 A. We do not actively pursue claimants to

12 become rehabilitated.

13 Q. Is it your understanding that that sentence

14 refers to situations in which insurance

15 companies are actively pursuing claimants

16 to be rehabilitated?

17 A. There are some insurance companies that do.

18 Q. And that -- This sentence is written for

19 them, and not for a company like Pan

20 American.

21 Is that right?

22 A. This is general -- general application of

23 the -- of rehabilitation.

24 Q. Okay. But you don't utilize it at Pan

25 American, that particular sentence?

26



1 A. No.

2 Q. Okay. Let's go to the next sentence at the  
3 top of the next page.

4 A. Okay.

5 Q. A goal of any responsible disability  
6 insurer will be to minimize total liability  
7 while providing equitable treatment to its  
8 claimants.

9 A. Uh-huh (affirmative response).

10 Q. Is that a goal of Pan American Life  
11 Insurance Company?

12 A. Yes.

13 Q. Is it a goal of Pan American Life Insurance  
14 Company when it decides whether to utilize  
15 rehabilitation?

16 A. Yes.

17 Q. Okay. So one of the factors that you  
18 utilize in deciding whether or not to  
19 provide rehabilitation benefits is whether  
20 it will minimize Pan Am's total liability.

21 Is that right?

22 A. It -- I can't say for sure. I mean the  
23 object is to have the person return to work  
24 and discontinue the claim.

25 Q. Okay.

26

1 A. It may or may not limit our liability.

2 Q. Okay. But if having the person return to

3 work does not discontinue the claim, you

4 don't do it. Right?

5 A. The objective is that the person -- We

6 don't -- we don't -- we don't determine it

7 as a win win situation.

8 Q. And you don't authorize the rehabilitation

9 benefits. Is that right?

10 A. That's a correct statement.

11 Q. Okay. Did you review Ms. Mathews' claim

12 for rehabilitation benefits prior to the

13 time that Pan American denied that claim?

14 A. No.

15 Q. Okay. Have you reviewed that claim since?

16 A. Some aspects of it.

17 Q. Okay. What aspects have you reviewed?

18 A. The general claim file.

19 Q. Okay. Have you formed a personal opinion

20 as to whether or not the claim for

21 rehabilitation benefits was correctly

22 denied?

23 A. No.

24 Q. You don't know one way or another?

25 A. I haven't formed a personal opinion. I

26

1           have formed an objective opinion.

2           Q. Okay. Well, what is your opinion?

3           A. My opinion is that the occupation in which  
4           she wished to endeavor would not ultimately  
5           be a suitable occupation based on her  
6           restrictions.

7           Q. What occupation did she wish to endeavor?

8           A. Nursing.

9           Q. And why would it not be suitable?

10          A. Nursing generally requires physical  
11          portions of that job when it comes to, you  
12          know, specifically patients. Moving  
13          patients, lifting patients, administering  
14          care to patients.

15          Q. And you're not aware of any nursing jobs  
16          that don't require those manual skills?

17          A. I believe she specifically stated RN. I  
18          can't be sure.

19                 But I would say I don't know of any  
20          nursing occupations that don't -- do not  
21          require -- that would not require some type  
22          of physical abilities.

23          Q. Okay. Have you made any investigation into  
24          that particular subject, the physical  
25          requirements of a nursing occupation?

26

1 A. We have not.

2 Q. Okay. Have you looked at any sources of  
3 information on that subject, such as the  
4 Dictionary of Occupational Titles?

5 A. I have not.

6 Q. In your experience as a disability claims  
7 representative and claims manager, have you  
8 dealt with nurses who were disabled?

9 A. I have.

10 Q. Okay. And in the course of doing that  
11 work, have you had the obligation to look  
12 at the occupational duties of nurses?

13 A. I have.

14 Q. Okay. And do you know what a nurse does?

15 A. Well, a nurse specifically assists doctors  
16 in caring for patients.

17 Q. Okay. But do you know what manual --  
18 physical requirements there are to be a  
19 registered nurse?

20 A. Not specifically.

21 Q. Okay. Do you know why Mr. Jones denied Ms.  
22 Mathews' claim for rehabilitation benefits?

23 A. I believe he denied it, because when  
24 responding to Ms. Mathews' request for  
25 rehabilitation, we did not get a clear  
26

1 answer or plan as to what this  
2 rehabilitation would entail and how it  
3 would expect to return her to normal work  
4 activity in the future.

5 Q. Okay. And you have since reviewed the  
6 claim since that determination was made not  
7 to give her the benefit.

8 Is that right?

9 A. I have looked at aspects of the file.

10 Q. Okay. And do you believe that Mr. Jones  
11 was correct to deny the claim on that  
12 basis?

13 A. I do.

14 Q. What additional information should Ms.  
15 Mathews have provided to Pan American such  
16 that Pan American would have had sufficient  
17 information to grant the claim?

18 A. We would have been able to make --

19 MR. EVANS:

20 I'm sorry.

21 Objection. Calls for speculation.

22 Go ahead.

23 THE WITNESS:

24 We would have been able to make,  
25 you know, a determination or review  
26

1           if we had known which school she was  
2           planning to attend, how many course  
3           hours she was planning to take, the  
4           number of courses, the cost of -- you  
5           know, of these courses, and her, you  
6           know, pretty much, you know,  
7           prognosis for going ahead and, you  
8           know, completing such course work.

9       EXAMINATION BY MR. KINNEY:

10      Q. Okay. Did Pan American ask Ms. Jones to  
11      provide that information?

12      A. We did.

13      Q. When?

14      A. After she made her request for the  
15      rehabilitation benefit.

16      Q. Okay. Did she provide it?

17      A. She replied with not much information.

18      Q. Okay. Did Pan American explain to her what  
19      additional information would be needed?

20      A. I don't recall. I think that was asked in  
21      the original letter.

22      Q. Okay. Does Pan American have a duty to its  
23      claimants to tell them what information is  
24      needed to perfect their claim?

25      MR. EVANS:

26

1                   Objection. Objection. Calls  
2                   for -- He's not a lawyer. Calls for  
3                   a legal conclusion.

4       EXAMINATION BY MR. KINNEY:

5       Q. You can answer.

6       A. I would say that was outlined in our  
7       original letter.

8       Q. Okay. Did Pan American make any effort to  
9       your knowledge to find out the information  
10      on its own?

11      A. Not to my knowledge.

12      Q. Okay. To your knowledge does Pan American  
13      have any duty to its claimants for  
14      disability benefits to make an independent  
15      investigation as to their  
16      disability -- their rehabilitation  
17      application?

18      MR. EVANS:

19                   Objection. Vague and ambiguous,  
20                   and also calls for a legal  
21                   conclusion.

22      EXAMINATION BY MR. KINNEY:

23      Q. You can answer.

24      A. I think the claimant was given sufficient  
25      opportunity based on our original letter to

26

1 provide the information that we requested.

2 Q. Okay. Well, that's not my question.

3 My question is does Pan American have  
4 any obligation to make an independent  
5 investigation beyond what the claimant  
6 provides?

7 MR. EVANS:

8 Objection. Misleading, misstates  
9 the law, calls for legal conclusion,  
10 and vague and ambiguous.

11 EXAMINATION BY MR. KINNEY:

12 Q. You can answer.

13 A. I don't know.

14 Q. Do you know what a certified rehabilitation  
15 specialist is?

16 A. No.

17 Q. So Pan Am has never used a certified  
18 rehabilitation specialist to your  
19 knowledge?

20 A. That's correct. We have never used one.

21 Q. Okay. Let's go to page 1073 of this  
22 document.

23 This is a section called Claims  
24 Disputes, and I am directing your attention  
25 to the second paragraph of this document,  
26



1 the second sentence.

2 Most major disability insurers have  
3 established elaborate internal procedures  
4 to review unfavorable adjudication  
5 decisions before they are communicated to  
6 the claimant.

7 Do you see that?

8 A. I do.

9 Q. Okay. Does Pan American Life Insurance  
10 Company have elaborate internal procedures  
11 regarding unfavorable decisions on  
12 rehabilitation benefit claims?

13 MR. EVANS:

14 Objection. Vague, calls for  
15 speculation.

16 THE WITNESS:

17 We have legal department review  
18 when our findings are that we should  
19 make an adverse decision.

20 EXAMINATION BY MR. KINNEY:

21 Q. Okay. And is that review performed before  
22 the adverse decision is communicated to the  
23 insured?

24 A. Yes.

25 Q. And is that done for rehabilitation  
26

1           benefits?

2           A. It's done for all adverse decisions.

3           Q. Okay. Was it done in the Mathews case?

4           A. It was.

5           Q. Do you know when that was performed?

6           A. I don't recall.

7           Q. Okay. And what exactly was done in terms  
8           of that?

9           A. The facts of the case were -- The claim  
10          file was reviewed by legal. They reviewed  
11          our policy language.

12          I can't say what else -- what other  
13          research that the legal department did, but  
14          they concurred --

15          MR. EVANS:

16                 At this point I will object to the  
17                 extent that he is being requested to  
18                 provide privileged communications  
19                 with counsel.

20          MR. KINNEY:

21                 All right. I would like to make  
22                 sure we have got the scope of the  
23                 objection.

24                 You certainly have the right --  
25                 It's all right with me if you make

26

1           that objection, but I want to make  
2           sure we have the scope of the  
3           objection and it is clear.

4           Are you advising him not to  
5           provide any information about the  
6           review by counsel of the Mathews  
7           claim?

8           MR. EVANS:

9           I am not. But I am instructing  
10          him not to answer about specific  
11          communications with counsel.

12          MR. KINNEY:

13          Okay. Well, I am going to have to  
14          keep asking some questions, and you  
15          can object and instruct him not to  
16          answer.

17          MR. EVANS:

18          We will do that, and this may be  
19          something we resolve after the break,  
20          but go ahead.

21          MR. KINNEY:

22          Okay.

23          EXAMINATION BY MR. KINNEY:

24          Q. Did you personally send the file to the  
25          legal department?

26

1 A. I did not.

2 Q. Okay. Did you tell Mr. Jones to do that?

3 A. I don't believe that I did.

4 Q. How do you know it was done?

5 A. I received either a request from Mr. Jones  
6 to be a part of a meeting with legal on the  
7 claim or from the legal department. I  
8 can't be sure.

9 Q. Okay. And was there a meeting that  
10 involved a lawyer?

11 A. From our company, yes.

12 Q. Okay. When was that meeting held?

13 A. I can't -- I don't know.

14 Q. Is there something in the claim file that  
15 would tell you?

16 A. I don't know.

17 Q. Okay. How long -- Let me ask you this.

18 Were you present at the meeting?

19 A. I was.

20 Q. Okay. Who else was present?

21 A. Our legal counsel and Judy Norwalt, the  
22 vice-president of administration.

23 Q. Okay. Was that Mr. Fraizer, who is sitting  
24 here today?

25 A. I'm sorry?

26

1           Oh, was he the attorney for our  
2           company?

3       Q. Yes.

4       A. No, it was not.

5       Q. Okay. Who was it?

6       A. Raymond Munna.

7       Q. Can you spell that?

8       A. M-U-N-N-A. Raymond.

9       Q. So there was you, Mr. Munna, Mr. Jones.

10           Is that right?

11       A. Correct.

12       Q. And the vice-president you just identified?

13       A. That's correct.

14       Q. Anybody else?

15       A. No.

16       Q. Where was the meeting held?

17       A. In a conference room.

18       Q. Okay. In the Pan American building across  
19       the street here?

20       A. Correct.

21       Q. Okay. How long did the meeting last?

22       A. Approximately 30 minutes.

23       Q. Okay. What documents were present at the  
24       meeting?

25       A. I don't recall.

26

1 Q. Was Ms. Mathews' request for disability

2 -- I'm sorry.

3 Was Ms. Mathews' request for

4 rehabilitation benefits present?

5 A. I don't recall.

6 Q. Okay. What did Mr. Jones say at the

7 meeting?

8 A. I don't recall.

9 Q. What did you say at the meeting?

10 A. I don't recall.

11 Q. What did Mr. Munna say at the meeting?

12 A. Mr. Munna concurred with Mr. Jones'

13 assessment that the -- that we should not

14 grant these benefits.

15 Q. Did he say anything else?

16 A. Not to my knowledge.

17 Q. Okay.

18 MR. EVANS:

19 Can I interpose an objection here?

20 I am providing a little leeway.

21 No waiver of the privilege is

22 intended at this point, but it's all

23 I can -- either I can object to every

24 single question or I don't.

25 MR. KINNEY:

26

1                   That's up to you. I mean it is.

2                   You know why I'm doing it. If you  
3                   want to interpose an objection, go  
4                   ahead.

5           MR. EVANS:

6                   Okay. Well, I have already.

7                   That's fine. That's fine.

8                   I just wanted to make that for the  
9                   record, and if I have got objections,  
10                  I will start objecting.

11          MR. KINNEY:

12                  Okay.

13          EXAMINATION BY MR. KINNEY:

14          Q. Did Mr. Munna say why he concurred with  
15          Mr. Jones' decision?

16          MR. EVANS:

17                  At this point I will invoke the  
18                  privilege, and instruct the witness  
19                  not to answer.

20          MR. KINNEY:

21                  Okay. Let's go off the record a  
22                  second.

23          THE VIDEOGRAPHER:

24                  We are going off the record. It  
25                  is 11:54. This is videotape number

26

1                   two.

2                   (Off the record.)

3

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Deposition of CORY R. SIMON

Taken on March 13, 2008

WITNESS' CERTIFICATE

I have read or have had the foregoing  
testimony read to me and hereby certify that  
it is a true and correct transcription of my  
testimony, with the exception of any attached  
corrections or changes.

CORY R. SIMON

1 REPORTER'S CERTIFICATE

2  
3 I, LINDY ROOT, Certified Court Reporter,  
4 do hereby certify that the above-mentioned  
5 witness, after having been first duly sworn by  
6 me to testify to the truth, did testify as  
7 hereinabove set forth;

8 That the testimony was reported by me in  
9 shorthand and transcribed under my personal  
10 direction and supervision, and is a true and  
11 correct transcript, to the best of my ability  
12 and understanding;

13 That I am not of counsel, not related to  
14 counsel or the parties hereto, and not in any  
15 way interested in the outcome of this matter.  
16  
17  
18  
19  
20

21 LINDY ROOT

22 CERTIFIED COURT REPORTER

23 REGISTERED PROFESSIONAL REPORTER  
24  
25